



Appeal Decision

Site visit made on 22 August 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2023

Appeal Ref: APP/Y3940/W/22/3313169

Stobberts Agricultural Buildings, Stobberts Road, Market Lavington, Devizes SN10 4AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Stephen Wordley against the decision of Wiltshire Council.
 - The application Ref PL/2022/03161, dated 20 April 2022, was refused by notice dated 16 June 2022.
 - The development proposed is the change of use of agricultural building to 1 No dwellinghouse (Class C3) and associated operational development.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the change of use of agricultural building to 1 No dwellinghouse (Class C3) and associated operational development at Stobberts Agricultural Buildings, Stobberts Road, Market Lavington, Devizes SN10 4AZ in accordance with the terms of the application, Ref PL/2022/03161, dated 20 April 2022, and the details submitted with it.

Applications for costs

2. An application for the award of costs was made by Mr Stephen Wordley against Wiltshire Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description of development set out above has been taken from the appeal form, which is consistent with the Council's decision notice. The Council determined the proposal on the basis of the description in the appeal form and I will do the same, save for omitting the words 'prior notification for the proposed' and 'pursuant to Class Q (b) of the GPDO 2015' in the banner heading and decision above, as these do not refer to an act of development.
4. Further details have been submitted with the appeal relating to the structural condition of the building. The Council has confirmed through its appeal statement that the information submitted now adequately demonstrates that the building is capable of conversion. The Council does not therefore wish to pursue their first reason for refusal. Nevertheless, it is a matter raised by an interested party and I have therefore had regard to this in this decision.

5. Through the appeal process the Council has acknowledged that its reference to paragraph Q.2(1)(e) of the GPDO within its second reason for refusal contradicts the reference in its Case Officer's Report. Nevertheless, it is a matter raised by interested parties and I have therefore had regard to this in this decision.
6. There is no dispute between the main parties that a Certificate of Lawfulness¹ for the proposed use of the appeal site for Class B8 (storage and distribution) was approved in 2021. This is therefore a material consideration, which I return to later in this decision.

Main Issues

7. The main issues are:
 - Whether the proposal would result in highway safety issues;
 - Whether the extent of the proposed works are reasonably necessary to carry out building operations allowed by paragraph Q.1(i) of Schedule 2, Part 3, Class Q of the GPDO; and
 - Whether a dwelling in this location would be compatible with adjacent land and building uses.

Reasons

Highway safety

8. In accordance with Schedule 2, Part 3, Class Q, paragraph Q.2(1) of the GPDO, prior approval of certain matters is required. This requires a consideration of the transport and highways impacts of the development.
9. The appeal site lies adjacent to the junction of Stobberts Road with The Clays. Whilst Stobberts Road is surfaced with tarmac and concrete, it links the site to the High Street (the B3098) to the northwest. The Clays is an unsurfaced track that passes along the edge of residential properties. Whilst both roads are relatively narrow and even if the appellant has a lawful right of way along The Clays, given that Stobberts Road has a consolidated surface and is a shorter section of road linking the site to the wider highway network, it is more likely that vehicles would use Stobberts Road. I note my conclusion in this regard is consistent with the Inspector dealing with an appeal² on this site in 2020 (the 2020 appeal).
10. Stobberts Road is narrow, without a pavement and there are a number of residential dwellings accessed from it. The majority of properties are historical developments and accesses have limited visibility along the road. There is a public bridleway along The Clays, which passes across the site frontage. However, the bridleway and residential properties are an established part of the character of the area, and it is likely that highway users will be well-used to vehicles exiting driveways, people walking along the road and riders using the bridleway. Given the character, it is a location where you would reasonably expect drivers to anticipate pedestrian and equestrian movements and take care.

¹ Council application reference PL/2021/03266

² Appeal reference APP/Y3940/W/20/3250212

11. Visibility emerging from Stobberts Road onto the High Street is adequate to the southwest. Nonetheless, the junction has extremely poor visibility to the northeast, largely due to a boundary wall around the edge of a residential property obscuring views. Moreover, it is narrow at its junction with the High Street. As such, vehicles would need to pull out into the carriageway when exiting Stobberts Road resulting in potential for collision between highway users. It also means that two vehicles could not realistically pass in Stobberts Road near its junction with the High Street. This would likely lead to vehicles waiting in the highway to turn into the road, or cause some reversing out of Stobberts Road if a car turns into the road should an opposing vehicle approach, potentially causing an obstruction to traffic.
12. I noted that a convex mirror has been attached to the telegraph pole on the opposite side of the junction. Whilst I do not doubt that the mirror assists visibility along the High Street to some extent, such a fitting could be broken or dislodged, and I am not convinced that it could be relied upon to sufficiently mitigate the lack of visibility.
13. The submitted evidence shows that on average there are approximately 406 two-way vehicle movements along the High Street during the morning peak hour and 194 two-way vehicle movements during the afternoon peak hour. It is therefore well used. Even though only one dwelling is proposed, this would still increase its use which in turn would increase the highway risks associated with it despite the lack of recorded incidents in the vicinity of the site. Whilst there may be alternative access along The Clays, there is no certainty that future occupiers of the proposed dwelling would not drive to the High Street via Stobberts Road on a regular basis.
14. The appellant draws attention to other developments, including those permitted with access onto The Clays. However, I do not have full details of these cases. Nevertheless, the case at 5 Stobberts Road was a replacement garage. The case relating to Market Lavington United Church was assessed as being likely to result in fewer vehicle movements, and the case at 11 White Street included visibility improvements along The Clays. As such, there are differences between the circumstances pertaining to those schemes and, therefore, these examples cannot be taken as a direct precedent for the current proposal. Furthermore, I have come to my decision based on the evidence before me, including my site visit, for this particular case.
15. The appellant has stated that the Highway Officer comments regarding highway safety came after the Council's decision was made. Nonetheless, they have had sufficient time to respond in full with the appeal, which I have taken fully into consideration.
16. Given the existing conditions with the access to the appeal site which are not, for the reasons set out above, adequate in terms of accessibility and safety, the proposal would have a significant adverse highway impact and would not satisfy the provisions of paragraph Q.2(1)(a) of Part 3 of Schedule 2 of the GPDO.
17. Notwithstanding my conclusion on this main issue, I return to the implications of the existing certificate of lawfulness and the question of "fallback" later in this decision.

Building operations

18. Some building operations are allowed as part of a Class Q(b) conversion, but paragraph Q.1(i) places restrictions on what can be undertaken. Permitted works can consist of the installation or replacement of (aa) windows, doors, roofs, exterior walls, and (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling house; and (ii) partial demolition to the extent reasonably necessary to carry out these building operations.
19. The Planning Practice Guidance (PPG) provides further clarification about the scope of permitted building operations. The permitted right assumes that the existing agricultural building is capable of functioning as a dwelling(s) and, hence, permits building operations which are reasonably necessary to convert the building, which may include those which would affect the external appearance of the building and would otherwise require planning permission. It goes on to state that it is not the intention of the GPDO to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.
20. Of further assistance is Hibbitt³ which addresses the extent of building operations allowed for a Class Q(b) application and whether they would amount to conversion or a re-build (fresh build), which are conceptually different. Hibbitt was considering an open-sided building, which is not comparable to the appeal building before me.
21. Whilst the appeal building was in a poor state of repair, I note the findings of the submitted structural condition report by R D L Brown (Report No 1685). The report advises that the building is structurally sound and adequate to take the additional loadings that would be applied. Updated commentary from K H Cole Building Surveyor supplied with the appeal confirmed the structural condition of the building remains the same.
22. The report stated that a new roof and concrete floors would be required. From my observations, which included going inside the building, and the evidence provided with the appeal, I am satisfied the building could be converted to a dwelling without significant building works which would go beyond that which would be reasonably necessary. I note that my findings in this regard are consistent with the Inspector dealing with the 2020 appeal and I am cognisant that the Council, through its appeal statement, has advised that the information submitted with the appeal now adequately demonstrates that the building is capable of conversion.
23. To conclude on this main issue, the building is suitable for conversion to residential use and the proposed building operations would be reasonably necessary to convert the building for it to function as a dwellinghouse and would comply with the provisions of Class Q(b) of the GPDO.

³ Hibbitt and another v Secretary of State for Communities and Local Government, Rushcliffe Borough Council [2016] EWHC 2853 (Admin).

Dwelling compatibility

24. Whilst the Council's Case Officer's Report raised no objection under paragraph Q.2(1)(e) of the GPDO, within its second reason for refusal, the Council states that the proposed development would sit amongst other agricultural/commercial buildings, which could be occupied by uses incompatible with the proposed residential use. One of the conditions under Class Q (paragraph Q.2(1)(e)) is whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order.
25. There is no specific guidance on what constitutes 'impractical or undesirable' for the purposes of criterion (e) of Q.2(1), but the PPG provides some further information about considerations which might be relevant.
26. The PPG sets out that 'impractical' reflects that the location and siting would 'not be sensible or realistic', and 'undesirable' reflects that it would be 'harmful or objectionable'. The example of a building on top of a hill with no road access, power source or other services is given as an instance where conversion may be considered impractical and the example of the location of a building adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals is given as an example of a case where conversion may be undesirable. Determining whether a location is undesirable calls for an exercise of planning judgement.
27. The appeal building is in close proximity to existing agricultural/commercial buildings and there are also residential developments in close proximity to northern and eastern sides. At the time of my site visit the other agricultural buildings appeared to have very little commercial or agricultural activity associated with them. The site was relatively overgrown and the barn to the west had partially collapsed.
28. Based on my observations on site and the evidence provided with the appeal submission, I am of the view that the activities associated with the existing buildings would not constitute intensive farming. Furthermore, I have no evidence to suggest that the barns would be used for silage storage or to store dangerous machines or chemicals.
29. The appeal scheme would use the same access as the existing buildings. The implications of its access in terms of highway safety are considered elsewhere in this decision.
30. I recognise that the farm buildings could be brought into a more active agricultural use in future. However, this is a small group of buildings close to a number of existing dwellings. I am satisfied that any future use is highly unlikely to become so intensive so as to cause unacceptable harm to the living conditions of future residents. Moreover, there is little substantive evidence that sharing the access would be particularly problematic and render the location of the site undesirable or impractical for future occupants. I note that my findings in this regard are consistent with the Inspector dealing with the 2020 appeal.
31. For the reasons outlined above, the location or siting of the building would not make it otherwise impractical or undesirable for the building to change from

agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order. The proposals, therefore, comply with the provisions of Q.2(1)(e) of the GPDO.

Other Matters

32. The purpose of Class Q of the GPDO is to increase the supply of housing through the conversion of agricultural buildings, which by definition will very frequently be in the open countryside. As such, the location of the development outside of the village boundary, as identified in the Market Lavington Neighbourhood Plan, and its sustainability are not grounds in this instance to dismiss the appeal. There is no substantive reason to find that the building was not in agricultural use on 20 March 2013 as stipulated under Class Q. The siting and access may hinder access for emergency services and service vehicles, but any development would have to ensure that the Building Regulations were complied with. I am satisfied that the address given for the appeal site is accurate. As such, objections raised in these regards fail to affect my overall conclusion.

Fallback

33. The appellant has raised that it would be possible under the GPDO to change the use of the existing building to a flexible commercial use. This type of development is covered by Schedule 2, Part 3, Class R of the GPDO and would allow for the appeal building, which does not exceed 150 square metres, to change use subject to the developer providing details to the local planning authority in accordance with R.3(1)(a) of the GPDO.
34. Whilst more than a year has passed since the Certificate of Lawfulness was granted, there is no requirement for the appellant to have commenced the change of use to a storage use. Moreover, there is little substantive evidence to support the Council's contention that the cost related to changing the use of the building to a commercial use would be prohibitive. I find nothing to suggest that it could not be physically developed.
35. The appellant has provided some evidence of third-party interest in the use of the site for storage. I understand that it is the appellant's intention to carry out a change of use to B8 storage or distribution use if the appeal were to be dismissed, and consequently this is their fallback position.
36. In light of this, there is a real prospect the appellant would change the use of the building to a B8 storage use and that this should be considered a true fallback position. I give significant weight to this fallback position as an alternative to the appeal scheme.
37. The details of evidence on traffic movements demonstrate that the appeal scheme would result in broadly the same level of trips as the B8 storage use of the building at peak times. Furthermore, it demonstrates that over a 12-hour period the appeal scheme would result in 10 fewer trips compared with a potential B8 storage use of the building. Given this, I consider that overall comings and goings and usage of the substandard junction of Stobberts Road with the High Street would be likely to be similar to, if not less than, the likely levels associated with the permitted development scheme relating to a storage use of the site.

Planning Balance

38. The appeal scheme would have a significant adverse highway impact. This harm attracts substantial weight. It is accepted that the appeal site could change use to B8 storage use using permitted development rights which would have a materially similar or more harmful effect on highway safety. Moreover, for the reasons given above, if the appeal fails, it is likely that the B8 storage use would take place. On balance, the weight attributed to the fallback position is very substantial and outweighs the harm identified. Therefore, there are material considerations to justify the development.
39. On the basis of the above considerations the fallback position carries significant weight in support of the development, in particular as there is a real prospect that it would be implemented, and it would have a similar or more harmful impact on highway safety compared with the appeal scheme.

Conditions

40. Paragraph Q.2(3) stipulates that development under Class Q is permitted subject to the condition that development must be completed within a period of 3 years starting with the prior approval date. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval.
41. I have had regard to the appellant's suggestion that a condition could be applied to require the removal of other buildings. However, given my findings above this would not be necessary. A third-party has suggested a condition to prevent further development of the site. In accordance with paragraph 54 of the National Planning Policy Framework 2021 planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Moreover, an alternative scheme or future development may require planning permission in their own right which would be considered on its merits. Therefore, such a condition would not be necessary.
42. The Council have suggested no conditions over and above those laid out under Class Q. As such, I find no need to impose any additional conditions.

Conclusion

43. For the above reasons, I find no grounds to refuse prior approval. Therefore, I conclude the appeal should be allowed.

J White

INSPECTOR